

September 2006

MJI Publications Updates

**Child Protective Proceedings Benchbook
(Revised Edition)**

**Criminal Procedure Monograph 6—Pretrial Motions
(Third Edition)**

**Criminal Procedure Monograph 8—Felony
Sentencing**

Domestic Violence Benchbook (3rd ed)

**Friend of the Court Domestic Violence Resource
Book (Revised Edition)**

Juvenile Traffic Benchbook (Revised Edition)

Michigan Circuit Court Benchbook

Sexual Assault Benchbook

Traffic Benchbook—Third Edition, Volume 1

Traffic Benchbook—Third Edition, Volume 3

Update: Child Protective Proceedings Benchbook (Third Edition)

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.2 Mandatory Reports of Suspected Abuse or Neglect

Effective July 6, 2006, 2006 PA 264 amended MCL 722.623 to revise the list of individuals who are required to report suspected child abuse or neglect. Replace the bullets beginning on page 24 and continuing on page 25 with the following text:

- physicians;
- dentists;
- physician's assistants;
- registered dental hygienists;
- medical examiners;
- nurses;
- persons licensed to provide emergency medical care;
- audiologists;
- psychologists;
- marriage and family therapists;
- licensed professional counselors;
- social workers;
- licensed master's social workers;
- licensed bachelor's social workers;

- registered social service technicians;
- social service technicians;
- school administrators;
- school counselors or teachers;
- law enforcement officers;
- members of the clergy; and
- regulated child care providers.

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.7 Investigation and Referral Requirements

Effective July 6, 2006, 2006 PA 256 revised the circumstances under which the Department of Human Services and local law enforcement agencies must refer a report of child abuse or neglect or must undertake an investigation. Replace the quoted paragraph at the top of page 30 with the following text:

“Within 24 hours after receiving a report made under this act, the department shall refer the report to the prosecuting attorney if the report meets the requirements of [MCL 722.623(6) or (9)] or shall commence an investigation of the child suspected of being abused or neglected. Within 24 hours after receiving a report whether from the reporting person or from the department under [MCL 722.623(6) or (9)], the local law enforcement agency shall refer the report to the department if the report meets the requirements of [MCL 722.623(7)] or shall commence an investigation of the child suspected of being abused or neglected or exposed to or who has had contact with methamphetamine production.” MCL 722.628(1).

Effective July 6, 2006, 2006 PA 264 revised the circumstances under which the Department of Human Services must transmit a copy of an allegation or written report and the results of any investigation to a law enforcement agency in the county in which the incident occurred, to include a child’s exposure to or contact with methamphetamine production. Replace the quote of MCL 722.623(6) beginning on page 30 and continuing on the top of page 31 with the following text:

“If an allegation, written report, or subsequent investigation of suspected child abuse or child neglect indicates a violation of [MCL 750.136b (criminal child abuse), MCL 750.145c (child sexually abusive material or activity), MCL 750.520b to MCL 750.520g (criminal sexual conduct), or MCL 333.7401c (manufacture of controlled substances)], involving methamphetamine has occurred, or if the allegation, written report, or subsequent investigation indicates that the suspected child abuse or child neglect was committed by an individual who is not a person responsible for the child’s health or welfare, including, but not limited to, a member of the clergy, a teacher, or a teacher’s aide, the department shall transmit a copy of the allegation or written report and the results of

any investigation to a law enforcement agency in the county in which the incident occurred. If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect is a child care provider and the department believes that the report has basis in fact, the department shall transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child."

Effective July 6, 2006, 2006 PA 264 revised the circumstances under which a local law enforcement agency must refer an allegation, or provide a written report and the results of any investigation, to the Department of Human Services, to include a child's exposure to or contact with methamphetamine production. Replace the quote of MCL 722.623(7) in the middle of page 31 with the following text:

"If a local law enforcement agency receives an allegation or written report of suspected child abuse or child neglect or discovers evidence of or receives a report of an individual allowing a child to be exposed to or to have contact with methamphetamine production, and the allegation, written report, or subsequent investigation indicates that the child abuse or child neglect or allowing a child to be exposed to or to have contact with methamphetamine production, was committed by a person responsible for the child's health or welfare, the local law enforcement agency shall refer the allegation or provide a copy of the written report and the results of any investigation to the county department of the county in which the abused or neglected child is found, as required by subsection (1)(a). If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect or allowed a child to be exposed to or to have contact with methamphetamine production, is a child care provider and the local law enforcement agency believes that the report has basis in fact, the local law enforcement agency shall transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child. Nothing in this subsection or subsection (1) shall be construed to relieve the department of its responsibilities to investigate reports of suspected child abuse or child neglect under this act."

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.8 Required Cooperation Between DHS and Law Enforcement Officials

Effective July 6, 2006, 2006 PA 256 amended MCL 722.628(3) to add an additional circumstance in which the Department of Human Services must seek the assistance of, and must cooperate with, law enforcement officials. Add the following text to the quote of MCL 722.628(3)(a)–(e) near the middle of page 33:

“(f) The child has been exposed to or had contact with methamphetamine production.”

2.9 Required Use of Protocols

Effective July 6, 2006, 2006 PA 263 amended MCL 722.628b to require the Department of Human Services (DHS) to refer a “central registry case” to the prosecuting attorney if the case involves a child’s exposure to or contact with methamphetamine production. Replace the first paragraph in this section on page 33 with the following text:

If a “central registry case” involves a child’s death, serious physical injury of a child, or sexual abuse or exploitation of a child, the DHS must refer the case to the prosecuting attorney for the county in which the child is located. MCL 722.628b. Similarly, if a “central registry case” involves a child’s exposure to or contact with methamphetamine production, the DHS also must refer the case to the prosecuting attorney for the county in which the child is located. *Id.* In both cases, the prosecuting attorney must review the case to determine whether the investigation complied with the required protocol. *Id.* A “central registry case” means a case that the DHS classifies as Category I or Category II. For cases investigated before July 1, 1999, a “central registry case” means a case involving a “substantiated” allegation of abuse or neglect. See MCL 722.622(d).*

*See Section 2.19, below, for a detailed discussion of the required classification of all allegations of child abuse and neglect.

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.11 Investigation and Custody Requirements When a Child Is Brought to a Hospital

Effective July 6, 2006, 2006 PA 266 amended MCL 722.626 to add a second circumstance in which the Department of Human Services (DHS) must have a medical evaluation made without a court order. Replace the last sentence in the first full paragraph on page 36 with the following text:

If the child's health is seriously endangered and a court order cannot be obtained, or if the child is displaying symptoms suspected to be the result of exposure to or contact with methamphetamine production, the DHS shall have an evaluation performed without a court order. MCL 722.626(3)(a) and (b).

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.15 Constitutional Requirements for Reporting and Investigating Suspected Child Abuse or Neglect

C. Cooperative and Joint Investigations of Suspected Child Abuse or Neglect

Effective July 6, 2006, 2006 PA 256 amended MCL 722.628(3) to add an additional circumstance in which the Department of Human Services (DHS) must seek the assistance of, and must cooperate with, law enforcement officials. Replace the first paragraph in this subsection on page 44 with the following text:

Cooperative investigations of suspected abuse or neglect. By statute in Michigan, the DHS and law enforcement officials are required to cooperate during investigations of suspected child abuse or neglect or when a child's exposure to or contact with methamphetamine production is suspected. MCL 722.628(2)–(4). In addition, the DHS is required to refer complaints that include Penal Code violations to the prosecuting attorney. MCL 722.623(6).*

*See Sections 2.7–2.8, above.

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.21 Time Requirements for Filing a Petition in Cases Involving Severe Physical Injury or Sexual Abuse

Effective July 6, 2006, 2006 PA 256 amended MCL 722.637 to add an additional circumstance under which the Department of Human Services (DHS) must file a petition seeking Family Division jurisdiction under MCL 712A.2(b). Replace the last paragraph on page 57 with the following text:

Within 24 hours after the DHS determines that a child was severely physically injured, sexually abused,* or allowed to be exposed to or have contact with methamphetamine production, the agency must file a petition seeking Family Division jurisdiction under MCL 712A.2(b). MCL 722.637.

*See Section 2.1(A), above, for definitions of “severe physical injury” and “sexual abuse.”

CHAPTER 5

Notice & Time Requirements

5.13 Table of Time and Notice Requirements in Child Protective Proceedings

Effective July 6, 2006, 2006 PA 256 amended the notice requirements of MCL 722.628(1) and MCL 722.637. Replace the table on page 155 with the following table:

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Reporting Suspected Abuse or Neglect	Oral report must be made immediately. Written report must be filed with the DHS within 72 hours of the oral report.	MCL 722.623(1)(a). See Section 2.6
Investigating Suspected Abuse, Neglect, or Exposure to or Contact with Methamphetamine Production	Report must be referred to the appropriate agency and/or an investigation must be commenced within 24 hours.	MCL 722.628(1), (6), and (7). See Section 2.7
Mandatory Petitions in Cases of Severe Physical Abuse, Sexual Abuse, or Exposure to or Contact with Methamphetamine Production	DHS must file petition within 24 hours after determining that child was severely physically injured, sexually abused, or allowed to be exposed to or have contact with methamphetamine production.	MCL 722.637. See Section 2.21
Preliminary Inquiries	May be conducted at any time. There is no notice requirement.	MCR 3.962(A). See Section 6.6

CHAPTER 6

Petitions & Preliminary Inquiries

6.2 Persons Who May Submit a Petition to Court

Effective July 6, 2006, 2006 PA 256 amended MCL 722.637 to add an additional circumstance in which the Department of Human Services must file a petition seeking Family Division jurisdiction under MCL 712A.2(b). Replace the second full paragraph on page 176 with the following text:

Within 24 hours after the Department of Human Services determines that a child was severely physically injured, sexually abused, or allowed to be exposed to or have contact with methamphetamine production, the agency must file a petition seeking Family Division jurisdiction under MCL 712A.2(b). MCL 722.637.

CHAPTER 13

Initial Dispositions

13.9 Dispositional Options Available to Court

I. Orders to Pay Child Support

In an order effective July 1, 2006, the Michigan Supreme Court revised Michigan Court Rule 3.973(F) to include an additional dispositional option available to courts. Immediately before Section 13.10 on page 364, add a new subsection as indicated and insert the following text:

The court may order one or both of the child's parents to pay child support. MCR 3.973(F)(5). To order child support under MCR 3.973(F), the court must use the Michigan Child Support Formula, MCL 552.605, and the Uniform Support Order, MCR 3.211(D). MCR 3.973(F).

CHAPTER 14

Paying the Costs of Child Protective Proceedings

14.2 Orders for Reimbursement of the Costs of Care or Services When a Child Is Placed Outside the Home

A. Amount of Reimbursement

By an order effective July 1, 2006, the Michigan Supreme Court adopted the Michigan Child Support Formula Schedules Supplement from the Michigan Child Support Formula Manual to replace the July 30, 1990 Schedule of Payments in the Guideline for Court Ordered Reimbursement. Replace the first paragraph in the middle of page 376 with the following text:

A reimbursement order “shall be reasonable, taking into account both the income and resources of the juvenile, parent, guardian, or custodian.” MCL 712A.18(2). The amount may be based upon the Michigan Child Support Formula Schedules Supplement from the Michigan Child Support Formula Manual. See MCL 712A.18(2) and (6).*

*Effective July 1, 2006, the Michigan Child Support Formula Schedules Supplement replaced the guidelines and model schedule to which MCL 712A.18(2) and (6) refer.

CHAPTER 14

Paying the Costs of Child Protective Proceedings

14.3 Orders for Reimbursement of the Costs of Service When a Child Is Placed in the Child's Own Home

By an order effective July 1, 2006, the Michigan Supreme Court adopted the Michigan Child Support Formula Schedules Supplement from the Michigan Child Support Formula Manual to replace the July 30, 1990 Schedule of Payments in the Guideline for Court Ordered Reimbursement. Replace the second paragraph near the top of page 380 with the following text:

The Michigan Child Support Formula Schedules Supplement from the Michigan Child Support Formula Manual may be used for determining the amount of reimbursement. See MCL 712A.18(6).*

*Effective July 1, 2006, the Michigan Child Support Formula Schedules Supplement replaced the guidelines and model schedule to which MCL 712A.18(6) refers.

September 2006

Update: Criminal Procedure Monograph 6—Pretrial Motions (Third Edition)

Part 2—Individual Motions

6.21 Motion to Compel Discovery

2. Information or Evidence That Must Be Disclosed by the Prosecuting Attorney

Insert the following text after the quote of MCR 6.201(B) on page 47:

A tacit agreement between the prosecution and a witness concerning potential or actual leniency related to the witness's criminal conduct is favorable evidence subject to disclosure under *Brady v Maryland*, 373 US 83 (1963). *Bell v Bell*, ___ F3d ___, ___ (CA 6, 2006). Upon the defendant's request, disclosure of an "agreement for testimony in connection with the case" is required under MCR 6.201(B)(5).

Update: Criminal Procedure Monograph 8—Felony Sentencing

Part VI—Fashioning an Appropriate Sentence

8.28 Concurrent and Consecutive Sentences

C. Discretionary Consecutive Sentences

For the following offenses, consecutive sentencing is discretionary for violations “arising out of the same transaction as the sentencing offense.”

Effective August 28, 2006, 2006 PAs 165, 169,* and 171 amended MCL 750.520b and 520c to add general sentencing provisions applicable to first-degree criminal sexual conduct (CSC-1) convictions and to provide specific penalties for certain CSC-1 offenses involving an offender aged 17 years or older and a victim under the age of 13. 2006 PA 171 also added a section to the Penal Code (MCL 750.520n) requiring that offenders convicted of CSC-1 or CSC-2 under certain circumstances be subject to lifetime electronic monitoring. MCL 750.520n and MCL 750.520b(3) permit consecutive sentencing for violations arising from the same transaction. Therefore, add the following bulleted text after the seventh bullet on page 139:

- MCL 750.520b(2)(a) and (b), first-degree criminal sexual conduct involving an offender aged 17 or older and a victim under the age of 13. MCL 750.520b(3).
- MCL 750.520n(2), violations involving equipment used for certain offenders subject to lifetime electronic monitoring.* MCL 750.520n(4).

Note: Lifetime electronic monitoring, MCL 791.285, was established by 2006 PA 172, effective August 28, 2006. Pursuant to MCL 791.285(3), “‘electronic monitoring’ means a device by which, through global positioning system satellite or other means, an individual’s movement and location are tracked and recorded.”

*2006 PA 169 incorporates changes first made to MCL 750.520b(2) by 2006 PA 165 (SB 709).

Appendixes

Appendix G

Offenses for which mandatory incarceration is prescribed, and therefore, for which probation is not authorized.

Mandatory life without parole

Effective August 28, 2006, 2006 PAs 165 and 169 amended MCL 750.520b to require a sentence of life imprisonment without parole when an offender aged 17 or older is convicted of CSC-1 involving a victim under the age of 13 and the offender was previously convicted of violating MCL 750.520b, 520c, 520d, 520e, or 520g and the victim was under the age of 13. Therefore, add the following text to the list of offenses under **Mandatory life without parole** in Appendix G:

MCL 750.520b(2)(c), conviction of MCL 750.520b involving a victim under age 13 when the offender is aged 17 or older and the offender has a previous conviction under MCL 750.520b, 520c, 520d, 520e, or 520g involving a victim under the age of 13.

Mandatory determinate minimums

Effective August 28, 2006, 2006 PA 169 amended MCL 750.520b to require that a mandatory minimum sentence of 25 years be imposed on an offender aged 17 or older convicted of CSC-1 against a victim under the age of 13. Therefore, add the following text to the list of offenses under **Mandatory determinate minimums** in Appendix G:

MCL 750.520b(2)(b), CSC-1 when the offender is aged 17 or older and the victim is under the age of 13.

Update: Domestic Violence Benchbook (3rd ed)

CHAPTER 3

Common “Domestic Violence Crimes”

3.14 Other Crimes Commonly Associated with Domestic Violence

A. Offenses Against Persons

6. Kidnapping

Effective August 24, 2006, 2006 PA 159 rewrote MCL 750.349 in its entirety. Insert the following **Note** after the first bullet at the top of page 106:

Note: The applicability and content of the Criminal Jury Instructions and case law cited above may be affected by 2006 PA 159, which amended MCL 750.349, effective August 24, 2006.

CHAPTER 3

Common “Domestic Violence Crimes”

3.14 Other Crimes Commonly Associated with Domestic Violence

A. Offenses Against Persons

12. Unlawful Imprisonment

Effective August 24, 2006, 2006 PA 160 added a new crime, unlawful imprisonment, to the Michigan Penal Code. Insert a new sub-subsection as indicated after the March 2006 update to page 108:

A person who knowingly restrains another person under any of the following circumstances has committed the crime of unlawful imprisonment:

- use of a weapon or dangerous instrument to restrain the person.
- the person restrained was secretly confined.
- the person was restrained in order to facilitate the commission of another felony or to facilitate flight after another felony was committed. MCL 750.349b(1)(a)–(c).

The crime of unlawful imprisonment is a felony punishable by not more than 15 years of imprisonment or a fine of not more than \$20,000.00, or both. MCL 750.349b(2). In addition, a defendant may be charged with, convicted of, or sentenced for any other violation of law occurring during the defendant’s commission of the unlawful imprisonment violation. MCL 750.349b(4).

13. Human Trafficking

Effective August 24, 2006, 2006 PA 162 added a new chapter to the Penal Code—Chapter LXVIIA contains a group of new crimes involving forced labor or services, criminal sexual conduct, or child sexually abusive activity. Insert a new sub-subsection as indicated immediately following the new sub-subsection (12) added above:

MCL 750.462b makes it a felony to knowingly subject or attempt to subject another person to forced labor or services by causing or threatening to cause physical harm to another person.

MCL 750.462c makes it a felony to knowingly subject or attempt to subject another person to forced labor or services by physically restraining or threatening to physically restrain another person.

MCL 750.462d makes it a felony to knowingly subject or attempt to subject another person to forced labor or services by abusing or threatening to abuse the law or legal process.

MCL 750.462e makes it a felony to knowingly subject or attempt to subject another person to forced labor or services by knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or any other actual or purported government identification document of another person.

MCL 750.462f makes it a felony to knowingly subject or attempt to subject another person to forced labor or services by using blackmail, using or threatening to cause financial harm to, or exerting or threatening to exert financial control over another person.

MCL 750.462g makes it a felony to knowingly recruit, entice, harbor, transport, provide, or obtain by any means, or attempt to recruit, entice, harbor, provide, or obtain by any means, a minor knowing that the minor will be used for child sexually abusive activity.

MCL 750.462h makes it a felony to recruit, entice, harbor, transport, provide, or obtain by any means, or attempt to recruit, entice, harbor, transport, provide, or obtain by any means another person, intending or knowing that the person will be subjected to forced labor, and to benefit financially or receive anything of value from participation in a venture that has engaged in one of these acts.

Violations of MCL 750.462b–750.462f and MCL 750.462h all are subject to the same punishment scheme:

- ♦ Simple violation of any of these statutes is punishable by imprisonment for not more than ten years.
- ♦ Violation of any of these statutes resulting in injury to another person is punishable by imprisonment for not more than 15 years.
- ♦ Violation of any of these statutes resulting in the death of another person is punishable by imprisonment for life or any term of years.

Violation of MCL 750.462g is punishable by imprisonment for not more than 20 years.

MCL 750.462i provides that if a violation of MCL 750.462b–750.462h involves kidnapping or an attempt to kidnap, criminal sexual conduct or an attempt to commit criminal sexual conduct, or an attempt to kill, that violation is punishable by imprisonment for life or any term of years.

The following definitions apply to the statutes discussed above:

- ♦ **“Child sexually abusive activity”** means “a child engaging in a listed sexual act.” MCL 750.462a(a), MCL 750.145c.
- ♦ **“Commercial sexual activity”** means “[a]n act of sexual penetration or sexual contact as those terms are defined in [MCL 750.]520a for which anything of value is given or received by any person” or any conduct prohibited under MCL 750.145c(2) or (3) (creation, production, distribution, promotion, etc. of child sexually abusive material). MCL 750.462a(b).
- ♦ **“Extortion”** means conduct prohibited under MCL 750.213, “including, but not limited to, a threat to expose any secret tending to subject a person to hatred, contempt, or ridicule.” MCL 750.462a(c).
- ♦ **“Financial harm”** means criminal usury as prohibited by MCL 438.41, extortion, employment contracts in violation of the wage and benefit provisions in MCL 408.471 to 408.490, or any other adverse financial consequence. MCL 750.462a(d).
- ♦ **“Forced labor or services”** means labor or services obtained or maintained by conduct described in at least one of the following provisions:
 - causing/threatening to cause serious physical harm to another person.
 - physically restraining/threatening to physically restrain another person.
 - abusing/threatening to abuse the law or legal process.
 - knowingly destroying, concealing, removing, confiscating, or possessing another person’s actual or purported passport or other immigration document, or any other government identification document.
 - blackmail.
 - causing/threatening to cause financial harm to any person. MCL 750.462a(e).
- ♦ **“Labor”** means work having economic or financial value. MCL 750.462a(f).
- ♦ **“Maintain,”** as it relates to labor or services, means “to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform the labor or services.” MCL 750.462a(g).
- ♦ **“Minor”** means a person under the age of 18. MCL 750.462a(h).

- ♦ **“Obtain”** means securing the performance of labor or services. MCL 750.462a(i).
- ♦ **“Services”** means “an ongoing relationship between a person and another person in which the other person performs activities under the supervision of or for the benefit of the person, including, but not limited to, commercial sexual activity and sexually explicit performances.” MCL 750.462a(j).

CHAPTER 9

Statutory Firearms Restrictions in Domestic Violence Cases

9.2 Definitions

Insert the following text after the quote of MCL 28.421(b) and MCL 750.222(d) near the middle of page 397:

A weapon need not be operable or reasonably or readily operable in order to constitute a “firearm” under MCL 750.222(d). *People v Peals*, ___ Mich ___, ___ (2006). Rather, the statutory definition “requires only that the weapon be of a type that is designed or intended to propel a dangerous projectile.” *Id* at ___. It is “the design and construction of the weapon, rather than its state of operability” that are relevant in determining whether a weapon is a “firearm.” *Id.* at ___.

September 2006

Update: Friend of the Court Domestic Violence Resource Book (Revised Edition)

CHAPTER 8

Criminal Court Proceedings Involving Domestic Violence

Part I—Elements of Common Domestic Violence Crimes

8.1 Domestic Violence Crimes Generally

Effective August 24, 2006, 2006 PA 160 and 2006 PA 162 added several new crimes to the Michigan Penal Code. Insert the following bullets after the March 2006 update to page 216:

- ♦ Unlawful imprisonment.
- ♦ Human trafficking offenses.

Update: Juvenile Traffic Benchbook (Revised Edition)

CHAPTER 2

Taking Custody of a Juvenile and Investigating a Criminal Traffic Offense

2.4 Investigating a Juvenile's Alleged "Drunk Driving" Offense

B. Chemical Testing of Blood, Breath, or Urine

Insert the following text after the third paragraph on page 23:

Neither dismissal nor suppression of the evidence is the appropriate remedy when a police officer violates MCL 257.625a(6)(d) by depriving a defendant of his or her right to a reasonable opportunity for an independent chemical test under MCL 257.625a(6)(d). *People v Anstey*, ___ Mich ___, ___ (2006). Rather, "when the trial court determines that the defendant was deprived of his or her right to a reasonable opportunity for an independent chemical test under MCL 257.625a(6)(d), the court may instruct the jury that the defendant's statutory right was violated and that the jury may decide what significance to attach to this fact." *Anstey, supra* at ___. The Michigan Supreme Court so ruled because "suppression of the evidence is not an appropriate remedy for a statutory violation where there is no indication in the statute that the Legislature intended such a remedy and no constitutional rights were violated." *Id.* at ___. As a result of the Court's ruling in *Anstey*, *People v Koval*, 371 Mich 453, 459 (1963) and its progeny, which held that noncompliance with MCL 257.625a required dismissal, are overruled. *Anstey, supra* at ___.

Update: Michigan Circuit Court Benchbook

CHAPTER 4

Criminal Proceedings

Part III—Discovery and Required Notices (MCR Subchapter 6.200)

4.26 Discovery

B. Scope of Discovery

Insert the following text after the second paragraph in this subsection near the bottom of page 362 :

A tacit agreement between the prosecution and a witness concerning potential or actual leniency related to the witness's criminal conduct is favorable evidence subject to disclosure under *Brady v Maryland*, 373 US 83 (1963). *Bell v Bell*, ___ F3d ___, ___ (CA 6, 2006).

CHAPTER 4

Criminal Proceedings

Part V—Trials (MCR Subchapter 6.400)

4.48 Jury Instructions

A. Generally

Insert the following text on page 431 after the first paragraph in this subsection:

See also *People v Anstey*, ___ Mich ___, ___ (2006), where the Court discusses in detail “[a] court’s inherent authority to instruct the jury on the law applicable to the case and the discretionary power to comment on the evidence.” In *Anstey*, the Court indicated that a jury instruction may be appropriate in cases where a defendant is deprived of a statutory right, and the statute itself does not provide a remedy and does not prohibit such an instruction. *Id.* at ___.

September 2006

Update: Sexual Assault Benchbook

CHAPTER 2

The Criminal Sexual Conduct Act

2.2 “Penetration” Offenses

A. Criminal Sexual Conduct—First Degree

1. Statutory Authority

Effective August 28, 2006, 2006 PAs 165 and 169* amended MCL 750.520b to add general sentencing provisions applicable to first-degree criminal sexual conduct (CSC-I) convictions and to provide specific penalties for certain CSC-I offenses involving an offender aged 17 years or older and a victim under the age of 13. Although substantive amendments included revisions/additions affecting only MCL 750.520b(2) and (3), the entire statute has been reprinted here for easier reference. Replace the April 2003 update to Section 2.2(A)(1) on page 30 with the following text:

MCL 750.520b (CSC-I—Penetration) provides:

“(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

“(a) That other person is under 13 years of age.

“(b) That other person is at least 13 but less than 16 years of age and any of the following:

“(i) The actor is a member of the same household as the victim.

“(ii) The actor is related to the victim by blood or affinity to the fourth degree.

“(iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

*2006 PA 169 incorporates changes first made to MCL 750.520b(2) by 2006 PA 165 (SB 709).

“(iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.

“(c) Sexual penetration occurs under circumstances involving the commission of any other felony.

“(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

“(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

“(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f).

“(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

“(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:

“(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

“(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.

“(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, “to retaliate” includes threats of physical punishment, kidnapping, or extortion.

“(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.

“(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

“(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

“(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

“(i) The actor is related to the victim by blood or affinity to the fourth degree.

“(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

“(2) Criminal sexual conduct in the first degree is a felony punishable as follows:

“(a) Except as provided in subdivisions (b) and (c), by imprisonment for life or for any term of years.

“(b) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.

“(c) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age, by imprisonment for life without the possibility of parole if the person was previously convicted of a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age or a violation of law of the United States, another state or political subdivision substantially corresponding to a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age.

“(d) In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring* under section 520n.

“(3) The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.”

*Lifetime electronic monitoring, MCL 791.285, was established by 2006 PA 172, effective August 28, 2006.

CHAPTER 2

The Criminal Sexual Conduct Act

2.2 “Penetration” Offenses

A. Criminal Sexual Conduct—First Degree

4. Penalties

*2006 PA 169 incorporates changes first made to MCL 750.520b(2) by 2006 PA 165 (SB 709).

Effective August 28, 2006, 2006 PAs 165 and 169* amended MCL 750.520b to add general sentencing provisions applicable to first-degree criminal sexual conduct (CSC-I) convictions and to provide specific penalties for certain CSC-I offenses involving an offender aged 17 years or older and a victim under the age of 13. Insert the following text on page 33 after the second paragraph:

An offender aged 17 or older who is convicted of CSC-I against a victim under the age of 13 is subject to a mandatory minimum term of imprisonment. MCL 750.520b(2)(b) states:

“For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.”

An offender aged 17 or older who is convicted of CSC-I against a victim under the age of 13 and who has a previous conviction under MCL 750.520b, 520c, 520d, 520e, or 520g (or a substantially corresponding federal or state law, or law of a political subdivision) involving a victim under the age of 13 must be sentenced to life imprisonment without the possibility of parole. MCL 750.520b(2)(c).

*2006 PA 171, effective August 28, 2006.

With the exception of a conviction under MCL 750.520b(2)(c) where mandatory life without parole is the prescribed penalty, offenders convicted under MCL 750.520b(2)(a) and (b) are subject to an additional penalty. According to MCL 750.520b(2)(d), “In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n.”*

Note: Lifetime electronic monitoring, MCL 791.285, was established by 2006 PA 172, effective August 28, 2006. Pursuant to MCL 791.285(3), “‘electronic monitoring’ means a device by which, through global positioning system satellite or other means, an individual’s movement and location are tracked and recorded.”

CHAPTER 2

The Criminal Sexual Conduct Act

2.3 “Contact” Offenses

A. Criminal Sexual Conduct—Second Degree

1. Statutory Authority

Effective August 28, 2006, 2006 PA 171 amended MCL 750.520c to require that an additional penalty be imposed on an offender convicted of second-degree criminal sexual conduct when the offender is aged 17 or older and the victim is under the age of 13. Replace the April 2003 update to Section 2.3(A)(1) on page 37 with the following text:*

MCL 750.520c (CSC-II—Contact) provides:

“(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

“(a) That other person is under 13 years of age.

“(b) That other person is at least 13 but less than 16 years of age and any of the following:

“(i) The actor is a member of the same household as the victim.

“(ii) The actor is related by blood or affinity to the fourth degree to the victim.

“(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

“(iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.

“(c) Sexual contact occurs under circumstances involving the commission of any other felony.

“(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

*Although the substantive amendment to this statute affects only MCL 750.520c(2), the entire statute has been reprinted here for easier reference.

“(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

“(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

“(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

“(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

“(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

“(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

“(i) The actor is related to the victim by blood or affinity to the fourth degree.

“(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

“(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

“(j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.

“(k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment

or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.

“(1) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

“(2) Criminal sexual conduct in the second degree is a felony punishable as follows:

“(a) By imprisonment for not more than 15 years.

“(b) In addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.”

CHAPTER 2

The Criminal Sexual Conduct Act

2.3 “Contact” Offenses

A. Criminal Sexual Conduct—Second Degree

4. Penalties

Effective August 28, 2006, 2006 PA 171 amended MCL 750.520c and added MCL 750.520n to require lifetime electronic monitoring for offenders aged 17 or older convicted of CSC-II violations involving a victim under the age of 13. Insert the following text on page 40 after the first paragraph in this subsection:

In addition to any other penalty imposed for violating MCL 750.520c, when a CSC-II conviction involves an offender aged 17 or older and a victim under the age of 13, the court must sentence the offender to lifetime electronic monitoring. MCL 750.520c(2)(b); MCL 750.520n(1).

Note: Lifetime electronic monitoring, MCL 791.285, was established by 2006 PA 172, effective August 28, 2006. Pursuant to MCL 791.285(3), “‘electronic monitoring’ means a device by which, through global positioning system satellite or other means, an individual’s movement and location are tracked and recorded.”

CHAPTER 2

The Criminal Sexual Conduct Act

2.5 Terms Used in the CSC Act

H. “Developmental Disability”

Effective August 28, 2006, 2006 PA 171 amended MCL 750.520a to specify that a “developmental disability” as defined in the CSC Act requires that all of the criteria listed in MCL 750.520a(b) be met. Replace the quote of MCL 750.520a(b) on page 64 with the following text:

MCL 750.520a(b) defines “developmental disability” as:

“an impairment of general intellectual functioning or adaptive behavior which meets all of the following criteria:

“(i) It originated before the person became 18 years of age.

“(ii) It has continued since its origination or can be expected to continue indefinitely.

“(iii) It constitutes a substantial burden to the impaired person’s ability to perform in society.

“(iv) It is attributable to 1 or more of the following:

“(A) Mental retardation, cerebral palsy, epilepsy, or autism.

“(B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.”

CHAPTER 3

Other Related Offenses

3.1 Chapter Overview

Effective August 24, 2006, 2006 PA 162 added a new chapter to the Penal Code—Chapter LXVIIA contains a group of new crimes involving forced labor or services, criminal sexual conduct, and child sexually abusive activity. Insert the following text after the fifth bullet (gross indecency) on page 117:

- ♦ Human trafficking offenses, MCL 750.462a to 750.462i. See Section 3.32.*

Effective August 24, 2006, 2006 PA 160 amended the Penal Code to add the crime of unlawful imprisonment, MCL 750.349b. Insert the following text before the last bullet (vulnerable adult abuse) on page 117:

- ♦ Unlawful imprisonment, MCL 750.349b. See Section 3.33.*

*Added by the September 2006 update to page 201.

*Added by the September 2006 update to page 201.

CHAPTER 3

Other Related Offenses

3.7 Child Sexually Abusive Activity

E. Pertinent Case Law

4. Definition of Terms

Insert the following text before the July 2005 update to page 137:

See also *People v Adkins*, ___ Mich App ___, ___ (2006), where the defendant was properly convicted of violating MCL 750.145c(2) when he communicated via the Internet with a law enforcement officer posing as a minor. The conduct prohibited under MCL 750.145c(2) includes the mere preparation to engage in child sexually abusive activity, and in *Adkins*, the evidence established that the defendant's communication with the perceived minor was in preparation for child sexually abusive activity. *Adkins, supra* at ____.

CHAPTER 3

Other Related Offenses

3.18 Internet and Computer Solicitation

F. Pertinent Case Law

Insert the following text after the May 2006 update to page 168:

See also *People v Adkins*, ___ Mich App ___, ___ (2006), where the defendant was properly convicted of violating MCL 750.145d(1)(a) when he communicated via the Internet with a law enforcement officer posing as a minor. The conduct prohibited under MCL 750.145d(1)(a) includes conduct described as child sexually abusive activity, MCL 750.145c(2), for which mere preparation can support a conviction. *Adkins, supra* at ___. In *Adkins*, the evidence established that the defendant's Internet communication with the perceived minor was in preparation for child sexually abusive activity. *Id.* at ____.

CHAPTER 3

Other Related Offenses

3.19 Kidnapping

A. Statutory Authority

Effective August 24, 2006, 2006 PA 159 rewrote MCL 750.349 in its entirety. Replace the quote of MCL 750.349 beginning at the bottom of page 168 and continuing on page 169 with the following text:

MCL 750.349 provides:

“(1) A person commits the crime of kidnapping if he or she knowingly restrains another person with the intent to do 1 or more of the following:

“(a) Hold that person for ransom or reward.

“(b) Use that person as a shield or hostage.

“(c) Engage in criminal sexual penetration or criminal sexual contact with that person.

“(d) Take that person outside of this state.

“(e) Hold that person in involuntary servitude.

“(2) As used in this section, ‘restrain’ means to restrict a person’s movements or to confine the person so as to interfere with that person’s liberty without that person’s consent or without legal authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.

“(3) A person who commits the crime of kidnapping is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$50,000.00, or both.

“(4) This section does not prohibit the person from being charged with, convicted of, or sentenced for any other violation of law arising from the same transaction as the violation of this section.”

CHAPTER 3

Other Related Offenses

3.19 Kidnapping

B. Elements of Offense

Insert the following text before the existing content of subsection (B) on page 169:

Note: Effective August 24, 2006, 2006 PA 159 rewrote MCL 750.349 in its entirety. The statutory revision is likely to affect the applicability and content of the Criminal Jury Instructions discussed below.

CHAPTER 3

Other Related Offenses

3.19 Kidnapping

C. Penalties

Effective August 24, 2006, 2006 PA 159 amended MCL 750.349 and added a monetary fine to the penalties available to a court when sentencing an offender convicted of kidnapping. Replace the first sentence in this subsection on page 170 with the following text:

A violation of MCL 750.349 is “a felony punishable by imprisonment for life or any term of years or a fine of not more than \$50,000.00, or both.” MCL 750.349(3). An offender convicted of kidnapping under MCL 750.349 may also be convicted of other offenses arising from the same transaction as the kidnapping violation. MCL 750.349(4).

CHAPTER 3

Other Related Offenses

Note: Instead of inserting the following new section where it would preserve the alphabetical order of the chapter and require the reader to reletter all sections following the new section, the new section below is placed after the chapter's existing sections. The alphabetical order of the chapter sections will be addressed when the benchbook is reprinted in its entirety.

3.32 Human Trafficking

Effective August 24, 2006, 2006 PA 162 added a new chapter to the Penal Code—Chapter LXVIIA contains a group of new crimes involving forced labor or services, criminal sexual conduct, and child sexually abusive activity. After the existing text on page 201, add a new Section 3.32 as indicated above, and insert the following text:

“Human trafficking” crimes include a number of separate offenses penalizing specific conduct involved in crimes related to forced labor or services. This section contains the statutory authority, necessary definitions, and penalties applicable to each of the human trafficking crimes.

A. Human Trafficking Crimes Involving Forced Labor or Services

1. Physical Harm

- Knowingly subjecting or attempting to subject another person to forced labor or services **by causing or threatening to cause physical harm** is a felony punishable by not more than 10 years of imprisonment. MCL 750.462b(1).
- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462b(2).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462b(3).

2. Physical Restraint

- Knowingly subjecting or attempting to subject another person to forced labor or services **by physically restraining or threatening to physically restrain** another person is a felony punishable by not more than 10 years of imprisonment. MCL 750.462c(1).

- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462c(2).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462c(3).

3. Abuse of the Legal Process

- Knowingly subjecting or attempting to subject another person to forced labor or services **by abusing or threatening to abuse the law or legal process** is a felony punishable by not more than 10 years of imprisonment. MCL 750.462d(1).
- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462d(2).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462d(3).

4. Interference with Passport/Immigration/Identification

- Knowingly subjecting or attempting to subject another person to forced labor or services **by knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or any other actual or purported government identification document** is a felony punishable by not more than 10 years of imprisonment. MCL 750.462e(1).
- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462e(2).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462e(3).

5. Blackmail or Financial Harm/Control

- Knowingly subjecting or attempting to subject another person to forced labor or services **by using blackmail, using or threatening to cause financial harm to, or exerting or threatening to exert financial control** over another person is a felony punishable by not more than 10 years of imprisonment. MCL 750.462f(1).

- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462f(2).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462f(3).

6. Recruiting, etc. Knowing or Intending the Result

- A person who knowingly or intentionally **recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means** another person for the purpose of forced labor or services is guilty of a felony punishable by not more than 10 years of imprisonment. MCL 750.462h(1)(a), (2).
- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462h(3).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462h(4).

7. Financial Benefit

- A person who **benefits financially or receives anything of value from participating in a venture engaged in conduct prohibited under the human trafficking chapter** is guilty of a felony punishable by not more than 10 years of imprisonment. MCL 750.462h(1)(b), (2).
- If violation of the statute causes injury to another person, the offender is guilty of a felony punishable by not more than 15 years of imprisonment. MCL 750.462h(3).
- If another person's death is caused by violation of the statute, the offender *must* be sentenced to prison for life or any term of years. MCL 750.462h(4).

B. Human Trafficking Crime Involving Child Sexually Abusive Activity

MCL 750.462g states:

“A person shall not knowingly recruit, entice, harbor, transport, provide, or obtain by any means, or attempt to recruit, entice, harbor, provide, or obtain by any means, a minor knowing that the minor will be used for child sexually abusive activity. A person

who violates this section is guilty of a felony punishable by imprisonment for not more than 20 years.”

C. Human Trafficking Crimes Involving Other Crimes

MCL 750.462i states:

“If a violation of this chapter involves kidnapping or an attempt to kidnap, criminal sexual conduct or an attempt to commit criminal sexual conduct, or an attempt to kill, the defendant shall be imprisoned for life or any term of years.”

D. Definition of Terms Used in the Human Trafficking Chapter

- ♦ **“Child sexually abusive activity”** means “a child engaging in a listed sexual act” as defined in MCL 750.145c. MCL 750.462a(a). See Section 3.7 for more information.
- ♦ **“Commercial sexual activity”** means “[a]n act of sexual penetration or sexual contact as those terms are defined in [MCL 750.]520a for which anything of value is given or received by any person” or any conduct prohibited under MCL 750.145c(2) or (3) (creation, production, distribution, promotion, etc. of child sexually abusive material). MCL 750.462a(b). See Section 3.7(A) for information on child sexually abusive material, and Section 2.5 for more discussion of the terms “sexual penetration” and “sexual contact.”
- ♦ **“Extortion”** means conduct prohibited under MCL 750.213, “including, but not limited to, a threat to expose any secret tending to subject a person to hatred, contempt, or ridicule.” MCL 750.462a(c). See Section 3.14 for more information.
- ♦ **“Financial harm”** means criminal usury (MCL 438.41), extortion, employment contracts in violation of the wage and benefit provisions in MCL 408.471 to 408.490, or any other adverse financial consequence. MCL 750.462a(d).
- ♦ **“Forced labor or services”** means labor or services obtained or maintained by conduct described in at least one of the following provisions:
 - causing/threatening to cause serious physical harm to another person.
 - physically restraining/threatening to physically restrain another person.
 - abusing/threatening to abuse the law or legal process.
 - knowingly destroying, concealing, removing, confiscating, or possessing another person’s actual or purported passport or other

immigration document, or any other government identification document.

- blackmail.
- causing/threatening to cause financial harm to any person. MCL 750.462a(e).
- ♦ **“Labor”** means work having economic or financial value. MCL 750.462a(f).
- ♦ **“Maintain,”** as it relates to labor or services, means “to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform the labor or services.” MCL 750.462a(g).
- ♦ **“Minor”** means a person under the age of 18. MCL 750.462a(h).
- ♦ **“Obtain”** means securing the performance of labor or services. MCL 750.462a(i).
- ♦ **“Services”** means “an ongoing relationship between a person and another person in which the other person performs activities under the supervision of or for the benefit of the person, including, but not limited to, commercial sexual activity and sexually explicit performances.” MCL 750.462a(j).

CHAPTER 3

Other Related Offenses

Note: Instead of inserting the following new section where it would preserve the alphabetical order of the chapter and require the reader to reletter all sections following the new section, the new section below is placed after the chapter's existing sections. The alphabetical order of the chapter sections will be addressed when the benchbook is reprinted in its entirety.

3.33 Unlawful Imprisonment

Effective August 24, 2006, 2006 PA 160 amended the Penal Code to add the crime of unlawful imprisonment, MCL 750.349b. On page 201, immediately after the update adding Section 3.32 on Human Trafficking, add a new Section 3.33 as indicated above, and insert the following text:

A. Statutory Authority and Penalties

A person who knowingly restrains another person under any of the following circumstances has committed the crime of unlawful imprisonment:

- use of a weapon or dangerous instrument to restrain the person.
- the person restrained was secretly confined.
- the person was restrained in order to facilitate the commission of another felony or to facilitate flight after another felony was committed. MCL 750.349b(1)(a)–(c).

The crime of unlawful imprisonment is a felony punishable by not more than 15 years of imprisonment or a fine of not more than \$20,000.00, or both. MCL 750.349b(2). In addition, a defendant may be charged with, convicted of, or sentenced for any other violation of law occurring during the defendant's commission of the unlawful imprisonment violation. MCL 750.349b(4).

B. Definitions of Relevant Statutory Terms

MCL 750.349b(3) defines the following terms:

- ♦ **“Restrain”** means to forcibly restrict a person's movements or to forcibly confine the person so as to interfere with that person's liberty without that person's consent or without lawful authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.” MCL 750.349b(3)(a).

- ♦ **“Secretly confined”** means “[t]o keep the confinement of the restrained person a secret [or t]o keep the location of the restrained person a secret.” MCL 750.349b(3)(b).

CHAPTER 4

Defenses To Sexual Assault Crimes

4.9 Impossibility

Insert the following text before the partial paragraph near the bottom of page 225:

But see *People v Adkins*, ___ Mich App ___, ___ (2006), where the defendant was properly convicted of violating MCL 750.145c(2) when he communicated via the Internet with a law enforcement officer posing as a minor. The conduct prohibited under MCL 750.145c(2) includes the mere preparation to engage in child sexually abusive activity, and in *Adkins*, the evidence established that the defendant's communication with the perceived minor was in preparation for child sexually abusive activity. *Adkins, supra* at ____.

CHAPTER 5

Bond and Discovery

5.14 Discovery in Sexual Assault Cases

B. Discovery Rights

1. Generally

Insert the following text after the fifth bullet near the middle of page 269:

A tacit agreement between the prosecution and a witness concerning potential or actual leniency related to the witness's criminal conduct is favorable evidence subject to disclosure under *Brady v Maryland*, 373 US 83 (1963). *Bell v Bell*, ___ F3d ___, ___ (CA 6, 2006). Upon the defendant's request, disclosure of an "agreement for testimony in connection with the case" is required under MCR 6.201(B)(5).

CHAPTER 9

Post-Conviction and Sentencing Matters

9.5 Imposition of Sentence

C. Second or Subsequent CSC Convictions

Effective August 28, 2006, 2006 PAs 165 and 169* amended MCL 750.520b to add a sentencing provision applicable to offenders aged 17 or older with certain previous criminal sexual conduct convictions involving a victim under the age of 13 when those offenders are subsequently convicted of first-degree criminal sexual conduct involving a victim under the age of 13. Insert the following text after the first **Note** near the top of page 456:

The Criminal Sexual Conduct Act mandates a sentence of life imprisonment without the possibility of parole for a defendant aged 17 or older convicted of CSC-I against a victim under the age of 13 when the defendant has a previous conviction under MCL 750.520b, 520c, 520d, 520e, or 520g involving a victim under the age of 13. MCL 750.520b(2)(c). A sentence imposed under MCL 750.520b may be made consecutive to any term of imprisonment imposed for any other offense arising from the same transaction. MCL 750.520b(3).

*2006 PA 169 incorporates changes first made to MCL 750.520b(2) by 2006 PA 165 (SB 709).

CHAPTER 9

Post-Conviction and Sentencing Matters

9.8 Parole

Effective August 28, 2006, 2006 PAs 167, 168, and 170 amended MCL 791.234, 791.236, and 791.242 to incorporate specific parole provisions related to criminal sexual conduct convictions. After the third paragraph in Section 9.7 on page 474, add a new section as indicated above, insert the following text, and renumber the existing Section 9.8 accordingly:

An offender sentenced to a term of years under MCL 750.520b(2)(b) for first-degree criminal sexual conduct (CSC-I) is eligible only for life parole. MCL 791.242(3). An offender granted life parole under MCL 791.242(3) remains subject to mandatory lifetime electronic monitoring under MCL 750.520n. MCL 750.520b(2)(d).

An offender convicted of CSC-I and sentenced to life imprisonment under MCL 750.520b(2)(b) is not eligible for parole. MCL 791.234(6)(e).

Where an offender is not already subject to lifetime electronic monitoring pursuant to MCL 750.520n, the parole board may require electronic monitoring when granting parole to an offender convicted of violating or conspiring to violate MCL 750.520b (CSC-I) or 750.520c (CSC-II). MCL 791.236(15). When an offender is subject to electronic monitoring under such circumstances, the monitoring is limited to the duration of the offender's parole. MCL 791.236(15)(a).

Note: Lifetime electronic monitoring, MCL 791.285, was established by 2006 PA 172, effective August 28, 2006. Pursuant to MCL 791.285(3), “‘electronic monitoring’ means a device by which, through global positioning system satellite or other means, an individual’s movement and location are tracked and recorded.”

Update: Traffic Benchbook— Third Edition, Volume 1

CHAPTER 2

Civil Infractions

2.6 Right-of-Way or Failure to Yield

B. Right-of-Way or Failure to Yield Violations

Effective August 15, 2006, 2006 PA 339 amended MCL 257.612 to require drivers to yield the right-of-way to bicyclists lawfully within an intersection or adjacent crosswalk. Replace the fourth bullet point from the bottom of the list on page 56 with the following text:

- failing to yield to pedestrians or bicyclists, MCL 257.612;

CHAPTER 2

Civil Infractions

2.9 Stop and Go, Signs and Signals

B. Traffic Lights or Signals

1. Solid Green

Effective August 15, 2006, 2006 PA 339 amended MCL 257.612 to require drivers to yield the right-of-way to bicyclists lawfully within an intersection or adjacent crosswalk. On page 75, replace the first paragraph with the following text:

“[P]roceed straight through or turn right or left unless a sign at that place prohibits either turn. . . . [Y]ield the right-of-way to other vehicles and to pedestrians and bicyclists lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.” MCL 257.612(1)(a).

3. Solid Red

Effective August 15, 2006, 2006 PA 339 amended MCL 257.612 to require drivers to yield the right-of-way to bicyclists lawfully within an intersection or adjacent crosswalk. Replace the two bullets at the bottom of page 75 and continuing on the top of page 76 with the following text:

- Right turn on solid red: After stopping, the driver may make a right turn from any one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn, unless otherwise prohibited, and yielding the right-of-way to other vehicles, pedestrians, and bicyclists lawfully using the intersection. MCL 257.612(1)(c)(ii).
- Left turn on solid red: After stopping, the driver may make a left turn from any one-way or two-way street into a one-way street carrying traffic in the direction of the left turn, unless otherwise prohibited, and yielding the right-of-way to other vehicles, pedestrians, and bicyclists lawfully using the intersection. MCL 257.612(1)(c)(ii).

CHAPTER 2

Civil Infractions

2.9 Stop and Go, Signs and Signals

B. Traffic Lights or Signals

6. Red and Yellow Arrows

Effective August 15, 2006, 2006 PA 339 amended the language of MCL 257.612. On page 76, replace the only paragraph in this sub-subsection with the following text:

“Red arrow and yellow arrow indications have the same meaning as the corresponding circular indications, except that they apply only to vehicle operators intending to make the movement indicated by the arrow.” MCL 257.612(1).

CHAPTER 3

Misdemeanor Traffic Offenses

Part E—Other Misdemeanors Found in the Motor Vehicle Code

3.41 Failing to Yield to Handicapped Individual

A. Statute

Effective August 15, 2006, 2006 PA 339 amended the language of MCL 257.612. On page 150, replace the text of this subsection with the following text:

MCL 257.612(4) states:

“A vehicle operator who approaches a person using a wheelchair or a device to aid the person to walk at a crosswalk or any other pedestrian crossing shall take necessary precautions to avoid accident or injury to the person using the wheelchair or device. A person who violates this subsection is guilty of a misdemeanor.”

Update: Traffic Benchbook— Third Edition, Volume 3

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.3 Chemical Tests Under the Vehicle Code’s “Implied Consent” Provisions—§625c

B. Administering Chemical Tests Under §625c

1. Advice That Must Be Given the Person Arrested

Insert the following text before the partial paragraph at the bottom of page 31:

See also *People v Antsey*, ___ Mich ___, ___ (2006), where the Supreme Court ruled that neither dismissal nor suppression of the evidence is the appropriate remedy when a police officer violates MCL 257.625a(63)(d) by failing to advise a defendant of his or her right to demand that a person of his or her own choosing administer one of the chemical tests. Rather, the proper remedy is a court instruction, upon the defendant’s request, that the defendant’s statutory right was violated and that the jury may decide what significance to attach to this fact. *Antsey, supra* at ___. The Court so ruled because “suppression of the evidence is not an appropriate remedy for a statutory violation where there is no indication in the statute that the Legislature intended such a remedy and no constitutional rights were violated.” *Id.* at ___. This ruling overrules *People v Koval*, 371 Mich 453, 459 (1963) and its progeny, including *People v Green*, 260 Mich App 392 (2004) discussed above, which held that noncompliance with MCL 257.625a required dismissal. *Antsey, supra* at ___ n 9. *Green* remains good law, however as to the issue related to police-administered chemical testing versus independent testing.

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.3 Chemical Tests Under the Vehicle Code’s “Implied Consent” Provisions—§625c

B. Administering Chemical Tests Under §625c

2. Manner of Conducting Chemical Tests

In *People v Anstey*, ___ Mich ___, ___, ___ v 9 (2006), the Supreme Court overruled *People v Koval*, 371 Mich 453 (1963) and its progeny, which included *People v Underwood*, 153 Mich App 598 (1986). Therefore, delete the paragraph beginning at the bottom of page 32 and continuing on page 33, and insert the following case summary in its place:

A person arrested for committing a crime described in §625c(1) must be given a reasonable opportunity to have someone of his or her own choosing administer a blood, urine, or breath test within a reasonable time of the arrest. Persons who exercise this right are responsible for obtaining a chemical analysis of the test sample. MCL 257.625a(6)(d). However, neither dismissal nor suppression of the evidence is the appropriate remedy when a police officer violates MCL 257.625a(6)(d) by failing to give a defendant a reasonable opportunity for an independent chemical test. *People v Anstey*, ___ Mich ___, ___ (2006). In *Anstey*, the defendant appealed his OWI conviction on the grounds that the police had prevented him from obtaining a blood test administered by a person of his own choice. *Id.* at ___. The Court of Appeals reversed the conviction, finding that the appropriate remedy for a violation of MCL 257.625a(6)(d) was dismissal. *Id.* ___. The Supreme Court disagreed, finding that the proper remedy when a trial court determines that a defendant was deprived of his or her right to a reasonable opportunity for an independent chemical test under MCL 257.625a(6)(d) is a jury instruction, upon the defendant’s request, “that the defendant’s statutory right was violated and that the jury may decide what significance to attach to this fact.” *Anstey*, *supra* at ____.